IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.641-DB of 1997
Date of decision: 26.04. 2007

Buta Singh and others.

-----Appellants.

Vs.

The State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. A.P.S. Deol, Advocate
for the appellants.

Mr. H.S. Brar, DAG, Punjab
for the respondent.

Adarsh Kumar Goel, J.

The appellants challenge their conviction and sentence as under:-

Buta Singh	Imprisonment for life and compensation of Rs.1 lac to his own son Kuldip Singh, minor, in default to undergo further RI for two years.	Under Section 302 IPC for murder of his wife Inderjit Kaur.
Buta Singh	RI for two years	Under Section 201 IPC
		(Concurrent with life imprisonment)
Baljinder Singh @ Chhinder Singh and Jasmel Kaur @ Jagdev Kaur	RI for two years each	Under Section 201 IPC

Case of the prosecution is that on 16.11.1995, appellant No.1 along with the co-accused committed murder of Inderjit Kaur and destroyed the evidence to avoid consequences of the offence. Appellant No.1 Buta Singh and appellant No.2 Baljinder Singh @ Chhinder Singh, both brothers, were married to the deceased and her cousin respectively. Deceased Inderjit Kaur was wife of Buta Singh while her cousin Rajwinder Kaur was married to Baljinder Singh @ Chhinder Singh about ten years prior to the occurrence. Inderjit Kaur had a son while Rajwinder Kaur did not bear any child. Rajwinder Kaur was harassed for not bearing a child and was being asked to agree for the divorce. Inderjit Kaur was harassed for dowry and also for her not persuading Rajwinder Kaur for divorce. About two months prior to the occurrence, a Panchayat was convened at the house of the accused to persuade the accused to rehabilitate Rajwinder Kaur, who had been sent back to her parents' house. The accused did not agree. A few days, thereafter, Buta Singh went to his in-laws' house and threatened that if Rajwinder Kaur did not agree for divorce, his family will eliminate Inderjit Kaur. On the date of occurrence i.e. on 16.11.1995, Guranditta Singh (PW-2), uncle of the deceased Inderjit Kaur came to the house of the accused to persuade him to rehabilitate Rajwinder Kaur. Jasmel Kaur, mother-in-law of Inderjit Kaur remarked that Inderjit Kaur be also sent to her parents' home. Jasmel Kaur also threw Inderjit Kaur on the ground. Buta Singh picked up a pestle (Ghotna) and hit Inderjit Kaur on her head. Chhinder Singh picked up a gandasa and also hit Inderjit Kaur on the head. Guranditta Singh tried to intervene to rescue her, but the accused had the weapons, on

account of which, Guradittan Singh was forced to ran away. It was past 11.00 P.M. He went to his village and told his brothers Mukand Singh, Jagtar Singh, Harchand Singh, Sukhmander Singh, Sarpanch and Jagjit Singh, Member Panchayat about the incident. On 17.11.1995 in the morning, all came with him to Village Pakka Kalan, where the accused lived, but when they reached the bus stop, they learnt that Inderjit Kaur had died and her body was being cremated by Buta Singh, Chhinder Singh and Jasmel Kaur. Guranditta Singh and others went to the cremation ground. Seeing them, the four accused ran away. Leaving the other companions near the pyre, Guranditta Singh along with Sarpanch Sukhmander Singh went to report the matter to the police and met the police party near the bridge, where ASI Malkiat Singh recorded his statement (Ex.PC) at 4.45 P.M., which led to registration of FIR. ASI Malkiat Singh (PW-4) proceeded to the house of the accused inspected the spot, lifted bloodstained earth from the kitchen platform (Chauka). He also recovered broken pieces of blue glass bangles and golden ear rings. The tractor in which the dead body was carried being PBS-2998 was found parked in the courtyard which was also taken into possession. ASI Malkiat Singh then came to the cremation ground, cooled down the pyre, separated burnt ashes and took the same into the possession along with an iron bangle and copper ring. He also took into possession planks of burnt wood and a plastic can. He sent the packets of bones to Medical College, Faridkot, which were examined by Dr. K.K. Aggarwal, Asstt. Professor, Forensic Medicine, who gave his report of examination of bones. The accused were arrested on 28.11.1995. Buta Singh got

recovered pestle (Ghotna) from his house in pursuance of disclosure statement and Chhinder Singh got recovered gandasa in pursuance of his disclosure statement. After completing the investigation, the accused were sent up for trial.

The prosecution examined Dr. K.K. Aggarwal (PW-1), Guranditta Singh (PW-2), Mukand Singh (PW-3) and ASI Malkiat Singh (PW-4). Affidavits of MHC Manjit Singh and report of Chemical Examiner and Serologist were also filed.

The accused denied the prosecution allegations. Buta Singh stated that he had cordial relations with his wife while Baljinder Singh stated that he was living separately along with his mother; Inderjit Kaur suffered an attack on November 17, 1995; he took her to Dr. Jaswant Singh and nurse Gurmail Kaur, who declared her to be brought dead; he sent Baljinder Singh to his in-laws' house on the tractor, who brought Mukand Singh, Bhuro and Guranditta Singh, who were satisfied that the death was natural. Cremation was done. Thereafter, they sought transfer of seven killas of land to Kuldip Singh son of Buta Singh and on refusal, FIR was lodged.

The accused examined Mithu Singh (DW-1), Sewadar of Gurudwara Jandsar of Pakka Kalan, who stated that he did not see any injury on the person of the deceased when he visited on learning that she had died. He also filed a copy of injunction order dated April 10, 1996, restraining Mukand Singh from dispossessing him of the land and also a copy of the application to declare Buta Singh's sister to be the guardian of the minor Kuldip Singh and a petition for divorce filed by Rajwinder Kaur.

After considering the evidence on record, the trial Court held the case of the prosecution to be proved beyond reasonable doubt against Buta Singh while Baljinder Singh @ Chhinder Singh and Jasmel Kaur were given benefit of doubt for the charge of murder, but they were convicted under Section 201 IPC.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants submitted that in absence of post-mortem examination on the dead body of the deceased, conviction of Buta Singh under Section 302 IPC was illegal. It was also submitted that since benefit of doubt has been given to Baljinder Singh and Jasmel kaur (appellants No.2 and 3), testimony of PW-2 Guranditta Singh, real uncle of the deceased was rendered doubtful. There was inordinate delay in lodging the FIR. Recovery of weapons was doubtful and the trial Court itself did not believe the same. The defence version furnished by Mithu Singh (DW-1), who saw the dead body before cremation, should have been accepted. Jasmel Kaur and Baljinder Singh have undergone almost substantial part of sentence out of sentence of two years. He relied upon judgment of the Hon'ble Supreme Court in ***Vadivelu Thevar v. The State of Madras*** AIR 1957 SC 614 about acceptability of evidence of a single witness where it was observed:-

> "10. .....On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions maybe safely stated as firmly established:

(*1*) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(*2*) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(*3*) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact.” The legislature determined, as long ago as 1872, presumably after the consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in *Sarkar’s Law of Evidence* — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the

well recognized maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1 Wholly reliable.

(*2*)Wholly unreliable.

(*3*) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

Learned counsel for the State supported the conviction and sentence of the appellants.

A perusal of record clearly shows that PW-2 Guranditta Singh has fully supported the version of the prosecution. The deceased was married to Buta Singh about 10 years ago and a child was born out of the marriage. Her cousin who was married to brother of the accused Buta Singh, did not bear a child and as such he wanted to get married again, on account of which, he had deserted Rajwinder Kaur, but she was not agreeable for divorce. About 2½ months prior to the occurrence, the accused had seen a girl and thereafter, they were putting pressure on the deceased and her family members to give their consent for divorce. On the other hand, the deceased and her family members were persuading the accused party not to divorce Rajwinder Kaur. This led to precipitation of the matter and Buta Singh assaulted the deceased in the presence of PW-2 Guranditta Singh. When he tried to intervene, he was also attempted to be assaulted, on which, he ran away and brought other family members, by which time, the deceased had already been done to death and steps had been taken for her cremation without informing her family members with a view to destroy the evidence. The evidence of this witness in all material particulars is reliable. It stands established that the accused aggrieved by the refusal of Rajwinder Kaur to agree for divorce and refusal of the deceased Inderjit kaur to help the accused, assaulted the deceased, which led to her death. There is no reason whatsoever to disbelieve this witness on this

aspect. The judgment relied upon by learned counsel for the appellant is distinguishable.

As observed by the Hon'ble Supreme Court in **Vadivelu Thevar** (*supra*), it is not necessary to call a particular number of witnesses. The Court may accept the testimony of a single witness if the single witness is credible. Only if the Court is not satisfied about the credibility of the evidence of a single witness, Court may look for corroboration. Court has to see the quality and not quantity of evidence. Where testimony of single witness is not reliable in material particulars, as rule of prudence, Court will look for corroboration by direct or circumstantial evidence. It depends on facts of each case. In the presence case, evidence of PW-2 Guranditta Singh is wholly reliable as far as material particulars are concerned. The same is also corroborated by PW-3 Mukand Singh. There is further corroboration by the proof of death and medical evidence that the bones could be connected to the age of the deceased. The fact that the trial Court has adopted a safe course by giving benefit of doubt to accused No.2 and 3 for their involvement in the offence of murder does not cause any dent to the evidence clearly implicating appellant No.1 for the offence of murder.

Mere fact that recoveries have not been believed by the trial Court, can be no ground to reject the prosecution version, which stands fully established from the ocular testimony and other circumstances. The evidence is to be judged by the yardstick of

probabilities and its intrinsic truth (***State of Punjab*** v. ***Jagir Singh***, AIR 1973 SC 2407 (para 23)). Mere defective investigation cannot be the basis for acquitting the accused if in spite of such defects, case against the accused is proved. ***State of U.P.*** **v.** ***Hari Mohan*** AIR 2001 SC 142 (para 9). The circumstance that a young lady died in the house of the accused, in absence of any explanation, is also a corroborative circumstance taken along with direct evidence proved on record, when defence that death was natural is not acceptable.

The defence evidence that the deceased died a natural death is not probable. The evidence of Mithu singh (DW-1) that he had seen body of the deceased, which did not have any injury on the head cannot be accepted as conclusive. The body being covered and only her face being uncovered, the witness may not have the occasion to see the injury and thus, version of DW-1 Mithu Ram is not enough to accept the defence version. It stands established that the accused Buta Singh and co-accused Baljinder Singh and Jasmel Kaur cremated the deceased to destroy evidence without informing her family members.

In above circumstances, conviction of the appellants is fully called for and is affirmed.

As regards sentence, appellant No.1 has been awarded imprisonment for life and has been required to pay compensation of Rs.1 lac, in default, to undergo further RI for 2 years for the offence of murder. He has also been sentenced to undergo RI for 2 years under

Section 201, which is run concurrently with the life imprisonment. No interference is called for.

As regards appellants Baljinder Singh @ Chhinder Singh and Jasmel Kaur@ Jagdev Kaur, since they have undergone substantial part of sentence, their sentence is reduced to the sentence already undergone.

The appeal is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

April 26, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**